

#65909-3-104  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ESTATE OF GURMIT SINGH, et	)	Case No. C09-00740 JW
al.	)	
	)	<b>STIPULATED PROTECTIVE ORDER</b>
Plaintiffs,	)	AS MODIFIED BY THE COURT
	)	
vs.	)	Complaint Filed: 2/19/09
	)	
CITY OF GILROY, et al.,	)	<b>[JURY TRIAL DEMANDED]</b>
	)	
Defendants.	)	

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal

1 principles to treatment as confidential. The parties  
2 further acknowledge, as set forth in Section 10, below, that this  
3 Stipulated Protective Order creates no entitlement to file  
4 confidential information under seal; Civil Local Rule 79-5 sets  
5 forth the procedures that must be followed and reflects the  
6 standards that will be applied when a party seeks  
7 permission from the court to file material under seal.

## 8 2. DEFINITIONS

9 2.1 Party: any party to this action, including all of  
10 its officers, directors,  
11 employees, consultants, retained experts, and outside counsel (and  
12 their support staff).

13 2.2 Disclosure or Discovery Material: all items or  
14 information, regardless of the medium or manner generated, stored,  
15 or maintained (including, among other things, testimony,  
16 transcripts, or tangible things) that are produced or generated in  
17 disclosures or responses to discovery in this matter.

18 2.3 "Confidential" Information or Items: information  
19 (regardless of how generated, stored or maintained) or tangible  
20 things that qualify for protection under standards developed under  
21 F.R.Civ.P. 26(c).

22 2.4 Receiving Party: a Party that receives Disclosure  
23 or Discovery Material from a Producing Party.

24 2.5 Producing Party: a Party or non-party that produces  
25 Disclosure or Discovery Material in this action.

26 2.6 Designating Party: a Party or non-party that  
27 designates information or items that it produces in disclosures or  
28 in responses to discovery as "CONFIDENTIAL"

1           2.7 Protected Material: any Disclosure or Discovery  
2 Material that is designated as "CONFIDENTIAL".

3           2.8 Outside Counsel: attorneys who are not employees  
4 of a Party but who are retained to represent or advise a Party in  
5 this action.

6           2.9 House Counsel: attorneys who are employees of a  
7 Party.

8           2.10 Counsel (without qualifier): Outside Counsel and  
9 House Counsel (as well as their support staffs).

10          2.11 Expert: a person with specialized knowledge or  
11 experience in a matter pertinent to the litigation who has been  
12 retained by a Party or its counsel to serve as an expert witness or  
13 as a consultant in this action and who is not a past or a current  
14 employee of a Party or of a competitor of a Party's and who, at the  
15 time of retention, is not anticipated to become an employee of a  
16 Party or a competitor of a Party's. This definition includes a  
17 professional jury or trial consultant retained in connection with  
18 this litigation.

19          2.12 Professional Vendors: persons or entities that  
20 provide litigation support services (e.g., photocopying;  
21 videotaping; translating; preparing exhibits or demonstrations;  
22 organizing, storing, retrieving data in any form or medium; etc.)  
23 and their employees and subcontractors.

24          3. SCOPE

25          The protections conferred by this Stipulation and Order cover  
26 not only Protected Material (as defined above), but also any  
27 information copied or extracted therefrom, as well as all copies,  
28 excerpts, summaries, or compilations thereof, plus testimony,

1 conversations, or presentations by parties or counsel to or in  
2 court or in other settings that might reveal Protected Material.

3 4. DURATION

4 Even after the termination of this litigation, the  
5 confidentiality obligations imposed by this Order shall remain in  
6 effect until a Designating Party agrees otherwise in writing or a  
7 court order otherwise directs. The United States District Court,  
8 Northern District, San Jose Branch shall retain jurisdiction to  
9 enforce this Order.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating  
12 Material for Protection. Each Party or non-party that designates  
13 information or items for protection under this Order must take care  
14 to limit any such designation to specific material that qualifies  
15 under the appropriate standards. A Designating Party must take care  
16 to designate for protection only those parts of material,  
17 documents, items, or oral or written communications that qualify -  
18 so that other portions of the material, documents, items, or  
19 communications for which protection is not warranted are not swept  
20 unjustifiably within the ambit of this Order.

21 Mass, indiscriminate, or routinized designations are  
22 prohibited. Designations that are shown to be clearly unjustified,  
23 or that have been made for an improper purpose (e.g., to  
24 unnecessarily encumber or retard the case development process, or  
25 to impose unnecessary expenses and burdens on other parties),  
26 expose the Designating Party to sanctions.

27 If it comes to a Party's or a non-party's attention that  
28 information or items that it designated for protection do not

1 qualify for protection, that Party or non-party must promptly  
2 notify all other parties that it is withdrawing the mistaken  
3 designation.

4           5.2 Manner and Timing of Designations. Except as  
5 otherwise provided in this Order (see, e.g., second paragraph of  
6 section 5.2(a), 5.2(b) and 5.3, below), or as otherwise stipulated  
7 or ordered, material that qualifies for protection under this Order  
8 must be clearly so designated before the material is disclosed or  
9 produced. Designation in conformity with this Order requires:

10           (a) for information in documentary form (apart from  
11 transcripts of depositions or other pretrial or trial proceedings),  
12 that the Producing Party affix the legend "CONFIDENTIAL" at the top  
13 of each page that contains protected material. If only a portion or  
14 portions of the material on a page qualifies for protection, the  
15 Producing Party also must clearly identify the protected portion(s)  
16 (e.g., by making appropriate markings in the margins).

17           A Party or non-party that makes original documents  
18 or materials available for inspection need not designate them for  
19 protection until after the inspecting Party has indicated which  
20 material it would like copied and produced. During the inspection  
21 and before the designation, all of the material made available for  
22 inspection shall be deemed "CONFIDENTIAL". After the inspecting  
23 Party has identified the documents it wants copied and produced,  
24 the Producing Party must determine which documents, or portions  
25 thereof, qualify for protection under this Order, then, before  
26 producing the specified documents, the Producing Party must affix  
27 "CONFIDENTIAL" at the top of each page that contains Protected  
28 Material. If only a portion or portions of the material on a page

1 qualifies for protection, the Producing Party also must clearly  
2 identify the protected portion(s) (e.g., by making appropriate  
3 markings in the margins).

4 (b) Attendance at depositions in this action in  
5 which "CONFIDENTIAL" is discussed, disclosed, or identified shall  
6 be limited to the deposition notary, the witness, counsel for the  
7 witness, counsel for the parties, and persons described in  
8 paragraph 7.2, below. The portion of the deposition transcript and  
9 exhibits thereto in which "CONFIDENTIAL" material is discussed,  
10 disclosed, or identified shall be sealed and protected from  
11 disclosure, except as permitted by this Order or as the Court may,  
12 in its discretion and for good cause, direct. Transcript pages  
13 containing Protected Material must be separately bound by  
14 the court reporter, who must affix to the top of each such page the  
15 legend "CONFIDENTIAL".

16 5.3. A producing party that inadvertently fails to mark  
17 an item as "CONFIDENTIAL" at the time of production shall have ten  
18 calendar days thereafter in which to correct its failure. Until  
19 expiration of the ten-day period, all items produced shall be  
20 considered and treated as "CONFIDENTIAL". Notice of any such  
21 correction shall be made in writing, accompanied by substitute  
22 copies of each item, appropriately marked. Within five calendar  
23 days of receipt of the substitute copies, the receiving party shall  
24 return or destroy the previous unmarked items and all copies  
25 thereof.

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges. Unless a prompt challenge to a  
28 Designating Party's

1 confidentiality designation is necessary to avoid foreseeable  
2 substantial unfairness, unnecessary economic burdens, or a later  
3 significant disruption or delay of the litigation, a Party does not  
4 waive its right to challenge a confidentiality designation by  
5 electing not to mount a challenge promptly after the original  
6 designation is disclosed.

7           6.2 Meet and Confer. A Party that elects to initiate a  
8 challenge to a Designating Party's confidentiality designation must  
9 do so in good faith and must begin the process by conferring  
10 directly (in voice to voice dialogue; other forms of communication  
11 are not sufficient) with counsel for the Designating Party. In  
12 conferring, the challenging Party must explain the basis for its  
13 belief that the confidentiality designation was not proper and must  
14 give the Designating Party an opportunity to review the designated  
15 material, to reconsider the circumstances, and, if no change in  
16 designation is offered, to explain the basis for the chosen  
17 designation. A challenging Party may proceed to the next stage of  
18 the challenge process only if it has engaged in this meet and  
19 confer process first.

20           6.3 Judicial Intervention. A Party that elects to press  
21 a challenge to a confidentiality designation after considering the  
22 justification offered by the Designating Party may file and serve a  
23 motion under Civil Local Rule 7 (and in compliance with Civil Local  
24 Rule 79-5, if applicable) that identifies the challenged material  
25 and sets forth in detail the basis for the challenge. Each such  
26 motion must be accompanied by a competent declaration that affirms  
27 that the movant has complied with the meet and confer requirements  
28 imposed in the preceding paragraph and that sets forth with



specificity the justification for the confidentiality designation that was given by the Designating Party in the meet and confer dialogue.

~~The objecting party shall bear the initial burden of~~  
 The burden of persuasion in any such challenge proceeding shall be on the  
~~establishing (1) how, in this particular case, the requested~~  
 Designating Party.  
~~information is relevant to the litigation or is reasonably~~  
~~calculated to lead to the discovery of admissible evidence, (2) the~~  
~~interests of the objecting party that would be harmed if the~~  
~~designation is not removed, and (3) precisely how that harm would~~  
~~occur and how extensive it would be.~~ The designation shall remain  
 effective until entry of an order that it be removed.

## 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 12, below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items.  
 Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated CONFIDENTIAL only to:

(a) the Receiving Party's Outside Counsel of record



1 in this action, as well as employees of said Counsel to whom it is  
2 reasonably necessary to disclose the information for this  
3 litigation and who have signed the "Agreement to Be Bound by  
4 Protective Order" that is attached hereto as Exhibit A;

5 (b) the officers, directors, and employees  
6 (including House Counsel) of the Receiving Party to whom disclosure  
7 is reasonably necessary for this litigation and who have signed  
8 the "Agreement to Be Bound by Protective Order" (Exhibit A);

9 (c) experts (as defined in this Order) of the  
10 Receiving Party to whom disclosure is reasonably necessary for this  
11 litigation and who have signed the "Agreement to Be  
12 Bound by Protective Order" (Exhibit A);

13 (d) the Court and its personnel;

14 (e) court reporters, their staffs, and professional  
15 vendors to whom disclosure is reasonably necessary for this  
16 litigation and who have signed the "Agreement to Be Bound by  
17 Protective Order" (Exhibit A);

18 (f) during their depositions, witnesses in the  
19 action to whom disclosure is reasonably necessary and who have  
20 signed the "Agreement to Be Bound by Protective Order"  
21 (Exhibit A). Pages of transcribed deposition testimony or exhibits  
22 to depositions that reveal Protected Material must be separately  
23 bound by the court reporter and may not be disclosed to  
24 anyone except as permitted under this Stipulated Protective Order.

25 (g) the author of the document or the original  
26 source of the information.

27 7.3. A copy of each signed "Agreement to Be Bound by  
28 Protective Order" shall be maintained by counsel for the party to

1 whom such Information is disclosed. Upon good faith belief that an  
2 improper disclosure of "CONFIDENTIAL" has occurred, counsel for the  
3 party who originally disclosed such Information shall fully  
4 articulate such concerns to opposing counsel and shall request that  
5 copies of all signed acknowledgments be made available for review.  
6 If the parties disagree that an improper disclosure may have  
7 occurred, the party claiming such improper disclosure may seek a  
8 court review of the circumstances, including an *in camera* review of  
9 all signed "Agreements to Be Bound by Protective Order" , to  
10 determine whether further investigation is warranted, including  
11 disclosure of the "Agreements to Be Bound by Protective Order" .

12 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
13 LITIGATION.

14 If a Receiving Party is served with a subpoena or an  
15 order issued in other litigation that would compel disclosure of  
16 any information or items designated in this action as  
17 "CONFIDENTIAL" the Receiving Party must so notify the Designating  
18 Party, in writing (by fax, if possible) immediately and in no event  
19 more than three court days after receiving the subpoena or order.  
20 Such notification must include a copy of the subpoena or court  
21 order.

22 The Receiving Party also must immediately inform in  
23 writing the Party who caused the subpoena or order to issue in the  
24 other litigation that some or all the material covered by the  
25 subpoena or order is the subject of this Protective Order. In  
26 addition, the Receiving Party must deliver a copy of this  
27 Stipulated Protective Order promptly to the Party in the other  
28 action that caused the subpoena or order to issue.

1           The purpose of imposing these duties is to alert the  
2 interested parties to the existence of this Protective Order and to  
3 afford the Designating Party in this case an opportunity to try to  
4 protect its confidentiality interests in the court from which the  
5 subpoena or order issued. The Designating Party shall bear the  
6 burdens and the expenses of seeking protection in that court of its  
7 CONFIDENTIAL material - and nothing in these provisions should be  
8 construed as authorizing or encouraging a Receiving Party in this  
9 action to disobey a lawful directive from another court.

10           9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

11           If a Receiving Party learns that, by inadvertence or  
12 otherwise, it has disclosed Protected Material to any person or in  
13 any circumstance not authorized under this Stipulated Protective  
14 Order, the Receiving Party must immediately (a) notify in writing  
15 the Designating Party of the unauthorized disclosures, (b) use its  
16 best efforts to retrieve all copies of the Protected Material, (c)  
17 inform the person or persons to whom unauthorized disclosures were  
18 made of all the terms of this Order, and (d) request such person or  
19 persons to execute the "Acknowledgment and Agreement to Be Bound"  
20 that is attached hereto as Exhibit A.

21           10. FILING PROTECTED MATERIAL. Without written permission  
22 from the Designating Party or a court order secured after  
23 appropriate notice to all interested persons, a Party may not file  
24 in the public record in this action any Protected Material. A Party  
25 that seeks to file under seal any Protected Material must comply  
26 with Civil Local Rule 79-5.

27           11. USE OF "OFFICIAL INFORMATION" AT PUBLIC TRIALS OR  
28 HEARINGS.

1 In the event that any party hereto intends to use any  
2 "CONFIDENTIAL" materia in any public trial or hearing in this  
3 action or any appeal therefrom, the party proposing to use such  
4 Information shall give adequate notice to the producing party to  
5 permit the producing party an opportunity to seek appropriate  
6 protection from the Court.

7 12. FINAL DISPOSITION. Unless otherwise ordered or agreed in  
8 writing by the Producing Party, within sixty days after the final  
9 termination of this action, each Receiving Party must return all  
10 Protected Material to the Producing Party. As used in this  
11 subdivision, "all Protected Material" includes all copies,  
12 abstracts, compilations, summaries or any other form of reproducing  
13 or capturing any of the Protected Material. With permission in  
14 writing from the Designating Party, the Receiving Party may destroy  
15 some or all of the Protected Material instead of returning it.  
16 Whether the Protected Material is returned or destroyed, the  
17 Receiving Party must submit a written certification to the  
18 Producing Party (and, if not the same person or entity, to the  
19 Designating Party) by the sixty day deadline that identifies (by  
20 category, where appropriate) all the Protected Material that was  
21 returned or destroyed and that affirms that the Receiving Party has  
22 not retained any copies, abstracts, compilations, summaries or  
23 other forms of reproducing or capturing any of the Protected  
24 Material. Notwithstanding this provision, Counsel are entitled to  
25 retain an archival copy of all pleadings, motion papers,  
26 transcripts, legal memoranda, correspondence or attorney work  
27 product, even if such materials contain Protected Material. Any  
28 such archival copies that contain or constitute Protected

Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

13. MISCELLANEOUS

13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

13.3 Use of own "CONFIDENTIAL" materials. Nothing herein shall be construed to limit in any way any party's use of its own "CONFIDENTIAL" materials.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Date: 8/25/09

CASPER, MEADOWS, SCHWARTZ & COOK

*Andrew C. Schwartz*

BY: ANDREW C. SCHWARTZ  
Attorneys for Plaintiffs,  
ESTATE OF GURMIT SINGH, et al.

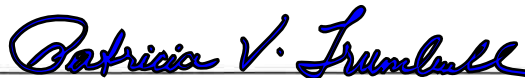
Date: 9/2/09

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BY: TIMOTHY J. SCHMAL  
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CHIEF DENISE TURNER, CAPTAIN SCOT  
SMITHEE, OFFICER RODRIGUEZ, SERGEANT  
WES STANFORD, OFFICER JAQUEZ,  
OFFICER HEATH.

1 IT IS SO ORDERED.

2  
3 Date: 9/3/09



4 THE HONORABLE ~~JAMES X WARE~~ PATRICIA V. TRUMBULL  
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6 MAGISTRATE JUDGE OF THE U.S. DISTRICT COURT.  
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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under  
 penalty of perjury that I have read in its entirety and understand  
 the Stipulated Protective Order that was issued by the United  
 States District Court for the Northern District of California on  
 [date] in the case of \_\_\_\_\_ [insert formal name of the case  
 and the number and initials assigned to it by the court]. I agree  
 to comply with and to be bound by all the terms of this Stipulated  
 Protective Order and I understand and acknowledge that failure to  
 so comply could expose me to sanctions and punishment in the nature  
 of contempt. I solemnly promise that I will not disclose in any  
 manner any information or item that is subject to this Stipulated  
 Protective Order to any person or entity except in strict  
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United  
 States District Court for the Northern District of California for  
 the purpose of enforcing the terms of this Stipulated Protective  
 Order, even if such enforcement proceedings occur after termination  
 of this action.

I hereby appoint \_\_\_\_\_ [print or type  
 full name] of  
 \_\_\_\_\_ [print or type full address  
 and telephone number]  
 as my California agent for service of process in connection with  
 this action or any proceedings related to enforcement of this  
 Stipulated Protective Order.



1 Date: \_\_\_\_\_

2 City and State where sworn and signed:

3 \_\_\_\_\_

4 Printed name: \_\_\_\_\_  
[printed name]

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6 Signature: \_\_\_\_\_  
[signature]

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